**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

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| **JOE ANDREW SALAZAR** | § | |
| | § | |
| **Plaintiff** | § | |
| | § | |
| **vs.** | § | CAUSE NO. 2:20-CV-00004-JRG |
| | § | |
| **AT&T MOBILITY, LLC,** | § | |
| **SPRINT/UNITED MANAGEMENT** | § | |
| **COMPANY, T-MOBILE USA, INC.,** | § | |
| **AND CELLCO PARTNERSHIP D/B/A** | § | |
| **VERIZON WIRELESS** | § | |
| | § | |
| **Defendants.** | § | |

## COVID-19 ADDENDUM TO FIRST AMENDED PROTECTIVE ORDER

Having considered the parties' Joint Motion for Entry of Covid-19 Addendum to First Amended Protective Order, IT IS NOW THEREFORE **ORDERED** that:

1.      This COVID-19 Addendum to the Protective Order shall be effective immediately upon entry, shall apply to the Parties (including their consultants, experts, outside counsel) for the inspection and review of PTI's Source Code.  For purposes of this Addendum only, "Source Code" shall include source code, object code, SDKs, NDKs, APKs, and similar computer code or kits.  Except as otherwise stated herein, all other provisions of the Protective Order shall remain in full force and effect and apply to PTI's Protected Material, including but not limited to PTI's source code.

2.      Defined terms in this Addendum have the meaning established in the Protective Order entered in this action (i.e., Dkt. No. 93) unless otherwise provided herein.  In addition, "Authorized Reviewer," in the context of this Addendum, shall mean any person who (a) is authorized under the Protective Order to access materials designated as "RESTRICTED

CONFIDENTIAL SOURCE CODE," and (b) has agreed to be bound by the provisions of this Addendum by signing a copy of Exhibit A to this Addendum.  Any consultant or expert for the Parties who wishes to be an Authorized Reviewer must disclose the information required by Rule 26(a)(2) of the Federal Rules of Civil Procedure and be pre-approved by PTI in accordance with Paragraph 8.e of the Protective Order at least two (2) business days before access to PTI's Source Code is given to that consultant.

3.      The parties shall not later argue that this COVID-19 Addendum to the First Amended Protective Order constitutes a proper approach in any circumstance other than the current COVID-19 pandemic.

4.      Notwithstanding anything to the contrary in the Protective Order:

(a)      **Overview of Remote Review of PTI Source Code**:  Remote review of Source Code, to the extent PTI agrees to provide any such information, shall be conducted only as set described below:

(i)      Source Code will only be made available for inspection, not produced except as provided for herein.  The files provided by PTI will be provided "as is."

(ii)      Source Code will only be made available for inspection until October 20, 2020.  The Parties expressly agree that PTI shall have no obligation to make its Source Code available after October 20, 2020 and that they will not seek inspection of PTI's Source Code after October 20, 2020, even if the Court modifies the schedule.

(iii)      A list of names of persons who will view the Source Code will be provided to PTI in conjunction with any written (including email) notice requesting inspection.

(iv)      Source Code shall be made available to Authorized Reviewers using a Remote Review Laptop provided by PTI and/or Fronteo.  The Party requesting a Remote Review Laptop shall pay the costs associated with that Laptop, including any rental costs charged by Fronteo.

(v)      No additional software aside from the exploratory software will be requested by the requesting party.  Nor will any additional software—including that used to run, compile, or execute, etc.—be used by the requesting party.

(vi)     Authorized Reviewers may remotely review the Source Code between the hours of 10 a.m. and 10 p.m. Pacific Time on business days (i.e., weekdays that are not Federal holidays).

(vii)     Remote Review Laptop(s) will be returned to PTI for inspection and deletion on or before October 20, 2020 using the authorized transport methods set forth in Paragraph 3(d)(i).

(b)     **Virtual Remote Code Review Environment**:  The Source Code will be stored

on a Virtual Machine that can be accessed remotely as follows:

(i)     The Source Code folders made available for inspection by PTI will be stored and hosted by Fronteo on a secure "Virtual Remote Code Review Environment."

(ii)     The Virtual Remote Code Review Environment will only have the Source Code folders made available for inspection by PTI, reasonable software for the exploration and discovery of the Source Code (provided and paid for by the Receiving Party).

(iii)     No copies of all or any portion of the Source Code may leave the Virtual Remote Code Review Environment in which the Source Code is inspected except as otherwise provided herein.

(iv)     No written or electronic record of the Source Code is permitted except as temporary images stored on the Virtual Remote Code Review Environment as provided in Paragraph 3(e) or as otherwise provided herein.

(v)     The Source Code may only be reviewed on a Remote Review Laptop made available by PTI and described in Paragraph 3(c).

(c)     **Remote Review Laptop**:  Any Remote Review Laptop made available by PTI

and/or Fronteo may only be used as follows:

(i)     Access to and review of the Source Code shall be strictly for the purpose of investigating the claims and defenses at issue in the above-captioned case.  No person shall review or analyze any Source Code for purposes unrelated to this case, nor may any person use any knowledge gained as a result of reviewing Source Code in this case in any other pending or future dispute, proceeding, or litigation.

(ii)     The Remote Review Laptop must be kept, at all times when not in use in accordance herewith, within a locked safe or a locked room (including a secure closet or cabinet) within the office or home of the Authorized Reviewer when not in use.

(iii)     Any Authorized Reviewer who is to receive a Remote Review Laptop shall, prior to receipt thereof, provide PTI with details regarding the location at which

such computer will be used for reviewing ("Source Code Review Room") and the location at which such computer will be stored when not being used for reviewing, for the sole purposes of ensuring compliance with the requirements of this Addendum regarding the location in which such computer is to be stored.

(iv)     The Source Code Review Room shall not be located outside the continental United States.

(v)      Except as outlined in paragraph 3(c)(vi), no recordable media or recordable devices, including without limitation sound recorders, computers, cell phones, smart watches, peripheral equipment, cameras, devices containing unobstructed cameras (e.g., webcams, unless entirely shielded with an opaque material), CDs, DVDs, or drives of any kind, may be in the Source Code Review Room when the Remote Review Laptop is powered on; however, to the extent such devices are unable to be removed without substantial burden (e.g. desktop computer) such devices shall be powered off and remain off during the review of the source code.

(vi)     The Authorized Reviewer shall be monitored via a web camera and web session when the Remote Review Laptop is turned on, to ensure that no unauthorized records of the Source Code are being created or transmitted in any way and no one other person than the Authorized Reviewer is in the room. During the review session, the Authorized Review shall not disable or obscure the field of view of the camera. Nothing may be placed in such a position as to block the camera's view.

(vii)    At all times, all network and USB ports and wireless transmitters of each Remote Review Laptop shall be and remain disabled except as permitted by Fronteo's system, and the Remote Review Laptop shall not be connected to a printer in any way.

(viii)   Before the Remote Review Laptop is turned on, the Authorized Reviewer who intends to review the Source Code shall provide a least two hours' notice to PTI via email at michael.song@ltlattorneys.com and david.cook@ltlattorneys.com that they are beginning a review session or in accordance with Fronteo's virtual log-in protocol.

(ix)     Once the Authorized Reviewer turns on the Remote Review Laptop, all of their keystrokes and program activity will be actively monitored by Fronteo's system. Fronteo will also provide the option of live video monitoring and video recording of the Authorized Reviewer's review.

(x)      Each Authorized Reviewer will be given a user ID and password to securely sign into the virtual space and remotely access Source Code.  Each Authorized Reviewer will have a separate user ID and password which is unique and specific to the Authorized Reviewer.  The Authorized Reviewer may not share their credentials with any other person.  Each Authorized Reviewer shall sign into the virtual environment using a Multifactor Authentication (MFA) to verify the reviewer's identity.

(xi)     While any Remote Review Laptop is in use, its screen shall be positioned in such a way that it is not visible from any external window of the room in which it is

stored, or such window shall be covered with blinds, shades, or a similar covering.

(xii)   During the review session and at all other times, the Authorized Reviewer shall not copy, remove, or otherwise transfer any Source Code to or from the Remote Review Laptop and/or the virtual environment including, without limitation, copying, removing, or transferring the Source Code onto any recordable media or recordable device.

(xiii)   The Authorized Reviewer shall be entitled to take handwritten notes relating to the Source Code but may not copy any portion of the Source Code into the notes.  Any notes relating to the Source Code will be marked and treated as "RESTRICTED CONFIDENTIAL – SOURCE CODE."

(xiv)   No person shall copy, e-mail, transmit, upload, download, print, photograph or otherwise duplicate any portion of the Source Code, except to create temporary images (see Paragraph 3(e)) or as otherwise permitted herein.

(xv)   The Remote Review Laptop must be turned off when not in active use.

(xvi)   Immediately after the Remote Review Laptop is turned off, the Authorized Reviewer shall notify PTI via email at michael.song@ltlattorneys.com and david.cook@ltlattorneys.com, or in accordance with Fronteo's virtual log-in protocol, that they are ending a review session.

(xvii)   Upon the completion of each review session, Authorized Reviewers shall provide, at PTI's request, a declaration confirming under penalty of perjury that no unauthorized electronic records of the Source Code were created or transmitted in any way.

(xviii)  A log may be generated of the Authorized Reviewer accessing the Virtual Remote Code Review Environment and the times that such person was logged into the system.

(d)   **Transport:**

(i)   Any Remote Review Laptop made available by PTI may only be transported as follows: (a) via hand carry, Federal Express, or other similarly reliable courier by PTI to a location agreed by PTI; and (b) each Remote Review Laptop may not be removed from said location, except to be returned to the location requested by the PTI via hand carry, Federal Express, or other similarly reliable courier, after providing notice to PTI of the intended shipment and receiving confirmation from PTI that such shipment can be securely received.

(ii)   Printed Source Code Pages may only be transported by, or at the direction of, a person authorized to receive the printouts to another person authorized to receive the printouts on paper via hand carry, Federal Express or other similarly reliable courier

(e)      **Printed Source Code Pages**:  PTI will endeavor to accommodate reasonable

print requests from the Parties according to the following procedures:

(i)      An Authorized Reviewer may create temporary images of portions of the Source Code  that are saved on the Virtual Remote Code Review Environment.  The Authorized Reviewer will have no way of removing the images from the Virtual Remote Code Review Environment.  Such images will only be saved temporarily to aid PTI in determining whether it objects to printing of those portions of the Source Code and, if no objection, to aid in printing.

(ii)      The Receiving Party may not request paper copies for the purposes of reviewing the Source Code in the first instance.

(iii)      The Receiving Party may request a reasonable number of pages of Source Code to be printed on watermarked or colored pre-bates numbered paper, which may be provided by PTI under the terms set forth in this paragraph.

(iv)      In no event may the Receiving Party print any continuous block of Source Code that results in more than 5 printed pages, or an aggregate total of more than 200 pages per side (Plaintiff is one side, Defendants and Intervenors collectively is the other side) without prior written approval by PTI.  The Receiving Party may not request approval to print more than 200 pages per side unless the Receiving Party first shows that the first 200 pages it requested to be printed are necessary to their claims.  PTI shall have no obligation to agree to such requests to print more than 200 pages per side under any circumstance.  Copies provided to a side other than the Receiving Party pursuant to subsection 3(e)(iv) do not constitute pages printed by that side for purposes of this subsection.

(v)      Within five (5) business days, or in any event no more than seven (7) business days, PTI will provide copies of the requested material to each side on watermarked or colored paper bearing Bates numbers and the legend "RESTRICTED CONFIDENTIAL – SOURCE CODE" unless objected to as discussed below.  The printed pages shall constitute part of the Source Code produced by PTI in this action.

(vi)      At the inspecting Parties' request, up to two additional sets (or subsets) (a total of up to three sets) of printed Source Code may be requested and provided by PTI within five business days via a delivery service selected by PTI.

(vii)      If PTI objects that the printed portions are not reasonably necessary to any case preparation activity, PTI shall make such objection known to the Receiving Party within five (5) business days, or in any event no more than seven (7) business days.  If after meeting and conferring PTI and the Receiving Party cannot resolve the objection (where such meet-and-confer need not take place in person), the Receiving Party may seek a Court resolution of whether the Source Code pages in question is reasonably necessary to any case preparation activity.  Contested Source Code pages need not be

produced to the requesting party until the matter is resolved by the Court.

     (viii)   If PTI does not object to producing the portions imaged, after those pages are produced, the images shall be deleted immediately thereafter.  If PTI objects to producing Printed Source Code Pages, the images will be saved until the objection is resolved by the Court.  After the Court resolves the dispute, the images shall be deleted either immediately or immediately after production.

(f)     **Access to Printed Source Code Pages**:  Only the following individuals shall have access to PTI's "RESTRICTED CONFIDENTIAL – SOURCE CODE" materials, absent the express written consent of PTI:

     (i)     Outside counsel of record for the Parties to this action, including any attorneys, paralegals, technology specialists and clerical employees of their respective law firms;

     (ii)     Up to three (3) outside experts or consultants per Party, pre-approved by PTI in accordance with Paragraph 8.e and Rule 26(a)(2) of the Federal Rules of Civil Procedure and specifically identified as eligible to access Source Code;

     (iii)     The Court, its technical advisor (if one is appointed), the jury, court personnel, and court reporters or videographers recording testimony or other proceedings in this action (as discussed below).

(g)     **Use of Printed Source Code Pages**:  A Party may only use Printed Source Code Pages as set forth in this subparagraph:

     (i)     The Receiving Party shall not create any electronic or other images of any Printed Source Code Pages from PTI.

     (ii)     The Receiving Party shall not create any additional paper copies of any Printed Source Code Pages from PTI.  Rather, any additional copies of Printed Source Code Pages can only be requested by a Party and created by PTI.

     (iii)     To the extent possible, Printed Source Code Pages from PTI should be identified by its production numbers.

     (iv)     Only to the extent necessary, and only after providing PTI with at least two (2) business days' notice, portions of Printed Source Code Pages from PTI may be used in papers filed with the Court and served on any Party, testifying expert reports, consulting expert written analyses, deposition exhibits as discussed below, or any draft of these documents ("SOURCE CODE DOCUMENTS").  Such SOURCE CODE DOCUMENTS must be designated as "RESTRICTED CONFIDENTIAL – SOURCE CODE," and must not be publicly filed.  The Receiving Party may make electronic copies or additional paper copies of such SOURCE CODE DOCUMENTS, but only to the

extent necessary and only after providing PTI with at least two (2) business days' notice of such intended use.

(v)     Any paper copies designated "RESTRICTED CONFIDENTIAL – SOURCE CODE" or notes, analyses or descriptions of such paper copies of Source Code shall be stored or viewed only at (i) the offices or homes of outside counsel for the Receiving Party, (ii) the offices or homes of outside experts or consultants who have been approved to access Source Code; (iii) the site where any deposition is taken  (iv) the Court; or (v) any intermediate location necessary to transport the information to a hearing, trial or deposition.  Any such paper copies or notes, analyses or descriptions of such paper copies of Source Code shall not be transported via mail service or any equivalent service and shall be maintained at all times in a secure location under the direct control of counsel responsible for maintaining the security and confidentiality of the designated materials and in a manner that prevents duplication of or unauthorized access to the Source Code, including, without limitation, storing the Source Code in a locked room or cabinet at all times, when it is not in use.

(vi)     To the extent portions of Source Code are quoted in a SOURCE CODE DOCUMENT, either (1) the entire document will be stamped and treated as RESTRICTED CONFIDENTIAL – SOURCE CODE or (2) those pages containing quoted Source Code will be separately bound, and stamped and treated as RESTRICTED CONFIDENTIAL – SOURCE CODE.

(vii)     The Receiving Party's outside counsel may only disclose a copy of PTI's Source Code to individuals specified in this Addendum (e.g., Source Code may not be disclosed to in-house counsel).  In no case shall any information designated as RESTRICTED CONFIDENTIAL – SOURCE CODE by PTI be provided to any other Party or counsel absent explicit agreement from PTI.

(viii)     Copies of Printed Source Code Pages, Source Code Documents, or other documents designated as RESTRICTED CONFIDENTIAL – SOURCE CODE may only be used at deposition or trial in this action when questioning: (i) any current or former officer, director or employee of PTI or original source of the information; (ii) any person designated by PTI to provide testimony pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure; (iii) any person who authored, previously received (other than in connection with this litigation), or was directly involved in creating, modifying, or editing the Source Code, as evident from its face or reasonably certain in view of other testimony or evidence; (iv) Authorized Reviewers; or (v) an expert or technical adviser retained by a Party and qualified to review such documents under this Addendum. Persons authorized to view Source Code pursuant to this sub-paragraph shall not retain or be given copies of the Source Code except while so testifying.

(ix)     Copies of Printed Source Code Pages, Source Code Documents, or other documents designated as RESTRICTED CONFIDENTIAL – SOURCE CODE, that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers.  In addition, the Receiving Party shall not bring copies of any Printed

Source Code Pages, Source Code Documents, or other documents designated as RESTRICTED CONFIDENTIAL – SOURCE CODE to any deposition.  Rather, at least five (5) business days before the date of the deposition, the Receiving Party shall notify PTI about the specific portions of Source Code it wishes to use at the deposition, and PTI shall arrange for such portions of those printed copies to be brought to the deposition for use by the Receiving Party.

(x)      Any technical advisor retained on behalf of a Receiving Party who is to be given access to PTI's produced Source Code must agree in writing not to perform software development work directly or indirectly intended for commercial purposes relating to any functionality covered by the Source Code reviewed by such expert or consultant for a period of one year after the issuance of a final, non-appealable decision resolving all issues in the case.  This shall not preclude such experts or consultants from consulting in future litigation, so long as such consulting does not involve software development work directly or indirectly intended for commercial purposes relating to any functionality covered by the Source Code reviewed by such expert or consultant.

(xi)      The Receiving Party's outside counsel shall maintain a log of all copies of the Source Code (received from PTI or contained in documents created by the Receiving Party) that are delivered by the Receiving Party to any qualified person.  The log shall include the names of the recipients and reviewers of copies, the dates when such copies were provided, and the locations where the copies are stored.  Upon request by PTI, the Receiving Party shall provide reasonable assurances and/or descriptions of the security measures employed by the Receiving Party and/or qualified person that receives a copy of any portion of the Source Code.

(xii)      If any Party plans to display any page of the Source Code at trial, such Party shall provide PTI a copy of the trial exhibit list and identify any exhibits referencing the Source Code.  The Party shall additionally provide PTI notice at least two (2) business days in advance before the day such pages are planned to be displayed.  If any page of the Source Code is to be displayed at trial, no member of the public will be allowed access to the courtroom while the Source Code is being displayed.

(xiii)     PTI has full custody and control of its source code, and only PTI or its counsel may instruct Fronteo to take any actions with respect to PTI's source code.

(h)      **Return of Remote Review Laptop and Printed Source Code Pages**:

(i)      Any Authorized Reviewer in possession of a Remote Review Laptop under the terms of this Addendum shall return such computer to PTI following the procedure described in Paragraph (i) above (a) on October 20, 2020, or (b) upon PTI's request after the occurrence of any one of the following before October 20, 2020: (1) the entry of an order dismissing or entering final judgment in this matter; (2) the entry of an order staying or administratively closing the case; (3) the conclusion of the Authorized Reviewer's engagement with any party to this matter or involvement in this matter; or (4) the entry of any order from the court requiring the return of the Remote Review Laptop.

(ii)     Within thirty (30) days after the issuance of a final non-appealable decision resolving all issues in the case, the Receiving Party must serve on PTI all paper copies of PTI's Source Code as well as any notes and documents reflecting or referring to such Source Code, including papers filed with the Court and served on any Party, testifying expert reports, consulting expert written analyses, deposition exhibits, or any draft of these documents.

(iii)    In addition, all persons to whom the paper copies of the Source Code were provided must certify in writing that all copies of the Source Code were returned to the counsel who provided them the information and that they will make no use of the Source Code or of any knowledge gained from the Source Code in any future endeavor.

(i)     **Agreement to be Bound**:  Each Authorized Reviewer and each person affiliated

with a Party who reviews any portion of PTI's Source Code shall sign a copy of Exhibit A to this

Addendum.

**So ORDERED and SIGNED this 31st day of August, 2020.**


_____
RODNEY  GILSTRAP
UNITED STATES DISTRICT JUDGE

## EXHIBIT A

I, _____, acknowledge and declare that I have received

a copy of the Covid-19 Addendum to First Amended Protective Order ("Addendum") in *Salazar*

*v. AT&T Mobility, LLC et al.*, United States District Court, Eastern District of Texas, Marshall

Division, Civil Action No. 2:20-CV-00004-JRG.  Having read and understood the terms of the

Addendum, I agree to be bound by the terms of the Addendum and consent to the jurisdiction of

said Court for the purpose of any proceeding to enforce the terms of the Addendum.


    Name of individual: _____

    Present occupation/job description: _____

    Name of Company or Firm: _____

    Address: _____

    Dated: _____


_____

[Signature]